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27 **UNITED STATES DISTRICT COURT**
28 **NORTHERN DISTRICT OF CALIFORNIA**
29 **SAN JOSE DIVISION**

30 IN RE HIGH-TECH EMPLOYEE
31 ANTITRUST LITIGATION
32 THIS DOCUMENT RELATES TO:
33 ALL ACTIONS.

34 Master Docket No. 11-CV-2509-LHK

35 **DECLARATION OF FRANK M.**
36 **HINMAN IN OPPOSITION TO**
37 **ADMINISTRATIVE MOTION**

38

39 Master Docket No. 11-CV-2509-LHK

40 **DECLARATION OF FRANK M. HINMAN IN OPPOSITION TO ADMINISTRATIVE MOTION**

41 A/75258593.2/2014763-0000355568

1 I, Frank M. Hinman, declare:

2 1. I am a partner at Bingham McCutchen, counsel to Intel Corporation in this matter.

3 I have personal knowledge of the facts stated in this declaration and, if called, could and would
4 testify competently to them.

5 2. It is not clear what point Mr. Glackin is trying to make in paragraph 2 of his
6 Declaration regarding the briefing schedule and our discussions on November 14. The only
7 reason Defendants may have “envisioned” that Plaintiffs would respond to the *Daubert* motion
8 along with their class certification reply, and that Defendants would then have a further reply on
9 the *Daubert* motion, is that we were willing to double the time Plaintiffs would have to respond
10 from two weeks to four. Under the normal briefing schedule on the *Daubert* motion, both the
11 opposition and reply would be due *before* Plaintiffs’ class certification reply. Mr. Tubach and I
12 explained that fact in one of our conversations with Plaintiffs that day. When Plaintiffs said they
13 didn’t want Defendants to have “the last word,” we offered them additional time to oppose the
14 *Daubert* motion (until November 29, later extended to December 3), and agreed that Defendants
15 would file a reply brief *at the same time* as Plaintiffs’ reply on class certification (December
16 10). Thus, under both the normal briefing schedule and Defendants’ proposed briefing schedule,
17 Defendants would not have had the last word, and all briefing related to class certification would
18 still have been completed by December 10, as the Court’s schedule contemplates. As we
19 explained to Plaintiffs, Defendants did not know we would be filing a *Daubert* motion when the
20 schedule was set, because we could not have known that Dr. Leamer’s opinions, as expressed in
21 his report and October 26 deposition testimony, would fail to meet the standards for
22 admissibility. Finally, with respect to *Ellis*, I stated that the Ninth Circuit opinion and the other
23 cases cited in Defendants’ Request for an Evidentiary Hearing support the fact that a *Daubert*
24 motion is the way that *Daubert* challenges are typically and properly brought. In my experience
25 that is how they are always brought.

26 3. For the class certification opposition brief, the first draft and every draft of which
27 I am aware, and there were many, were written in Garamond font.

4. Attached as Exhibits A-E are true and correct copies of evidentiary objections at issue in the cases cited in Plaintiffs' brief, obtained from the Court's Electronic Case Filing System:

- a. Exhibit A: *Adams v. Kraft*, No. 5:10-CV-00602-LHK, docket number 14;
- b. Exhibit B: *Johnson v. Lockheed Martin Corp.*, No. 5:11-CV-01140-LHK docket number 34;
- c. Exhibit C: *Yates v. Delano Partners, LLC*, No. 4:10-CV-03073-CW, docket number 79, a representative example of the objections at issue;
- d. Exhibit D: *Gauntlett v. Ill. Union Ins. Co.*, No. 5:11-CV-00455-EJD, docket number 39; and
- e. Exhibit E: *Oak Point Partners, Inc. v. Lessing*, No. 5:11-CV-03328-LHK docket number 40, a representative example of the objections at issue.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in San Francisco, California on November 19, 2012.

/s/ Frank M. Hinman
Frank M. Hinman